FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1935

No. 360

PENNSYLVANIA RAILROAD COMPANY,
Petitioner,

vs.

ILLINOIS BRICK COMPANY,
Respondent.

MOTION OF RESPONDENT TO DISMISS WRIT OF CERTIORARI.

ABRAHAM R. MILLER,
Counsel for Respondent.

CHICAGO LAW PRINTING CO., 111 W. MONROE STREET, CHICAGO

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Now comes respondent, Illinois Brick Company, a corporation, by Abraham R. Miller, its counsel, and respectfully moves the Court to dismiss the writ of certiorari heretofore granted herein, and in support of said motion shows unto this Honorable Court the following facts:

1. The writ of certiorari in this cause was granted by this Honorable Court on October 14, 1935.

2. The Clerk of this Court, under date of January 22, 1936, instructed counsel to appear before this Court on

Thursday, February 6, 1936, for the argument of the above entitled cause.

3. Petitioner has not at the date of this motion filed its briefs in this Court; neither has it served respondent with any copies of said brief.

3. Petitioner has not at any time heretofore signified to this respondent that it intended to rely upon its petition for certiorari as a brief in this case, but in fact petitioner's counsel have at numerous times informed respondent's counsel that the brief which would be filed would differ in some material respects from the petition for certiorari heretofore filed herein.

4. Respondent's counsel has during the last two months repeatedly requested petitioner's Chicago counsel to expedite the filing of petitioner's briefs in order that respondent might have a fair and adequate time within which to answer the same.

5. Rule 27 of this Court provides in part as follows:

"1. The counsel for appellant or petitioner shall file with the clerk, at least three weeks before the case is called for hearing, forty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

* * *

"3. The counsel for an appellee or respondent shall file with the clerk forty printed copies of his brief, at least one week before the case is called for hearing.

* * *

"5. When, under this rule, an appellant or petitioner is in default, the court may dismiss the case; and when an appellee or respondent is in default, the court may decline to hear oral argument in his behalf."

6. The violation by petitioner of the above sections of the said Rule 27 has materially prejudiced the rights of respondent by depriving it of sufficient time within which to prepare respondent's brief and to prepare to meet petioner's contentions upon oral argument.

7. In order for respondent to file its brief within the time prescribed by Paragraph 3 of said Rule 27, it would be necessary for such briefs to be printed and mailed from Chicago not later than Tuesday, January 28, 1936, which means that respondent's brief would have to be written and printed without the opportunity to examine the arguments contained in petitioner's brief.

Wherefore, respondent respectfully moves this Honorable Court to dismiss the writ of certiorari heretofore granted herein because of said violation of Rule 27 of this Court.

ILLINOIS BRICK COMPANY,
Respondent,

By ABRAHAM R. MILLER,
Its Counsel.

Dated at Chicago, Illinois,
January 27, 1936.